THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.4024 of 2005

Date of Decision: 1 - 8 - 2006

Dr.Dharam Singh **.....Appellant**

v.

Chaudhary Charan Singh, Haryana Agricultural University, Hisar **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.V.P.Malik, Advocate
for the appellant.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal has been filed challenging the judgment of the learned Additional Civil Judge (Sr.Division), Hisar partly decreeing the suit filed by the appellant and the judgment of the learned Additional District Judge, Hisar dismissing the first appeal filed by the appellant.

A reading of the facts of this case would show that the appellant had rendered service from 1960 to 1968 in the Punjab Agricultural Department and thereafter in the Punjab Agricultural University. Thereafter, he had served with the respondent University. Upon his retirement from the respondent University on 30.11.1993, he made a claim that his service from 19.1.1960 to 13.1.1968 should be counted towards qualifying service for pension. When the respondent University rejected his claim, he filed Civil Writ Petition No.14127 of 1997 in this Court. While the same was pending before this Court, he made a mercy petition before the respondent University once again some times in the year 2000. Acting

on his mercy petition the respondent University reconsidered his case and it was decided to give him the benefit of past service from 1960 to 1968 towards pensionary benefits subject to his withdrawing the writ petition pending in this Court and depositing the terminal benefits received by him from his previous employer to the respondent University along with 6% interest. The plaintiff accepted these conditions. He withdrew his writ petition pending before this Court. He also deposited the amount got earlier along with 6% interest. As a result of this, the University gave him the benefit of past service from 1960 to 1968. He then filed the present civil suit claiming 18% interest on the amount of arrears paid partly in October, 2001 and the remaining in March, 2002. He also claimed refund of excess amount. The matter was examined by the trial Court. The relevant observations of the trial Court are as hereunder:-

> "17. On the other hand, defendant, by way of filing of written arguments, submitted that through the instant suit, the plaintiff has claimed all retiral and pensionary benefits including refund of excess recovery made from him according to amended rules after his retirement in respect of period of 8 years i.e. 19.1.1960 to 13.1.1968 alongwith interest. In fact, the plaintiff has earlier filed a civil writ petition No.14127 in the year 1997 of the same purpose but later on in the year 1999 he made a mercy appeal to the defendant University vide Ex.D1, requesting therein to decide the matter and the defendant University keeping in view the mercy appeal of the plaintiff, put the matter before the Board of Management on 28.3.2001 and the Board decided the matter for counting his past service i.e. 19.1.1960 to 13.1.1968 with certain conditions. The plaintiff also deposited Rs.30480/- as per the decision of the Board of the Management and he cannot reprogate and aprogate his own stand as per his choice because the Board of the Management of the defendant University on

his mercy appeal, decided the matter. Otherwise also the defendant University has already denied the claim of the plaintiff in the year 1995, which he did not challenge otherwise also. Hence, the claim of the plaintiff is meritless and the same be dismissed.

18. After considering the rival contentions of both the parties, I am of the considered opinion that the claim of the plaintiff qua the refund of terminal benefits deposited by him alongwith interest, is not maintainable because the payment of terminal benefits alongwith interest was made by the plaintiff in pursuant to the conditions imposed upon him in the decision of the Management on 28.3.2001 in reference to his mercy petition otherwise also the plaintiff has not been able to prove on file as to how the rule amended for making it mandatory upon the plaintiff to deposit terminal benefits was not applicable on his case. The plaintiff in his statement has asserted that he retired on 30.11.1993, whereas the notification dated 11.8.1997 was implemented w.e.f. 25.8.1994. The copy thereof was placed on file at Annexure -$ of the written submission of the plaintiff. Perusal of the this document shows that in fact the benefit of previous service was allowed to the employee subject to deposit of terminal benefits alongwith 6% interest. Since the plaintiff has already been granted the benefit of previous service obviously on deposit of the terminal benefits alongwith interest, therefore, the plaintiff cannot claim the refund of this payment as it was pre requisite for counting of pensionary benefits including previous service.

19. It is not disputed that the plaintiff filed a mercy petition Ex.D1 for counting of his past service for pension. Vide Ex.D2 his mercy petition was accepted subject to the condition that he will withdraw

the court case pending adjudication before the Hon'ble High Court of Punjab and Haryana and further he should refund the terminal benefits alongwith interest up to 31.3.2001. It is also not in dispute that the plaintiff withdrew the said Civil Writ Petition and deposited the terminal benefits alongwith interest with the defendant and accordingly his past service has been counted and he has received the arrears of Rs.206495/- and presently he is getting enhanced payment. The mercy petition of the plaintiff dated 21.12.1999 was decided by the defendant on 19.4.2001 Ex.D2 in favour of the plaintiff and in compliance there to the plaintiff withdrew the writ petition and deposited the terminal benefits. The defendant was duty bound to decide the mercy petition immediately after receiving the same. This lapse on the part of the defendant shows that the plaintiff is entitled to receive the interest w.e.f. 21.12.1999, the date when he moved mercy petition till 6.10.2001 on the payment received on that date and upto 20.3.2002, the date on which the payment of remaining arrears towards pensionary benefits was made to him.

20. For the reasons aforementioned both these issues are decided in favour of the plaintiff to the extent that the plaintiff is entitled to interest 9% per annum on the retiral benefits from the date of filling of his mercy petition i.e. 21.12.1999 till 6.10.2001 on the payment received by him on that date and upto 20.3.2002 on the payment of remaining arrears towards pensionary benefits received by him on that date."

On this basis the suit of the plaintiff was partly decreed and he was granted 9% interest from the date of filing of the mercy petition which was dated 21.12.1999 uptill the time the payment was actually received. The payment was received on 6.11.2001 and 20.3.2002. The said judgment was affirmed by the

learned Lower Appellate Court.

On going through the facts I find that no interference is called for in the view taken by the learned trial Court, as affirmed by the learned lower Appellate Court. The plaintiff filed a mercy petition and accepted the conditions imposed by the respondent University. He thereafter withdrew the writ petition pending before this Court. The trial Court in spite of this has granted him interest at the rate of 9% from the date of the mercy petition. The view taken is fair and just. No question of law arises for consideration of this Court in this regular second appeal.

The appeal is therefore dismissed.

(P.S.PATWALIA)
JUDGE

August 1, 2006.

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